

Chapter 90 - PEDDLERS AND SOLICITORS¹¹

Footnotes:

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Cross reference— Businesses, ch. 18; health and sanitation, ch. 62; vehicles used for peddling fruits and vegetables, § 62-83; secondhand goods, ch. 102; streets, sidewalks and other public places, ch. 114; traffic and vehicles, ch. 126.

State Law reference— Home solicitation transactions, Vernon's Ann. Civ. St. art. 5069-13.01 et seq.; criminal trespass, V.T.C.A., Penal Code § 30.05; persons regarded as retailers under sales tax law, V.T.C.A., Tax Code § 151.024.

Sec. 90-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Mobile food unit (MFU) means an approved and permitted vehicle mounted, self or otherwise propelled, self-contained food service vehicle, designed to be readily movable, used to store, prepare, display, serve or sell frozen or refrigerated confections, including but not limited to ice cream cones, frozen ice cream novelties, raspas or paletas. A mobile food unit does not include a stand, booth, or push or peddle cart.

Posted notice means a sign or signs posted on the property or at or near the entrance to a building, reasonably likely to come to the attention of solicitors, peddlers, or other individuals, indicating that soliciting activities are forbidden.

Soliciting activities means any of those activities engaged in by a solicitor or peddler or mobile food unit as described in this section.

Solicitor or peddler or mobile food unit (MFU) means any individual, firm, or corporation who may be traveling from place to place and who:

- (1) Sells or attempts to sell frozen or refrigerated confections or takes or attempts to take orders for the sale of goods, wares, merchandise, or personal property (including tickets for shows and books of coupons which could be traded in for goods or services) for immediate or future delivery;
- (2) Collects or attempts to collect money or property.

(Code 1961, § 15-1; Ord. No. 2016-47, § 1, 8-23-16)

Cross reference— Definitions generally, § 1-2.

Sec. 90-2. - Regulation of activities.

- (a) It shall be unlawful for any person to engage in soliciting activities upon premises where a posted notice exists prohibiting such soliciting activities, with wording such as "No solicitors" or wording with similar intent.
- (b) Mobile food units are prohibited to operate on vacant or unimproved properties at any time.
- (c) Mobile food units shall not vend or sell within any city park, including streets within said parks, unless first approved by the city's parks and recreation department.

- (d) Mobile food units shall be subject to permitting through the city environmental services division, and shall comply with all applicable planning and zoning requirements, if applicable, in addition to complying with all statutory and local traffic codes and regulations.
- (e) Mobile food unit operators and food handlers, shall be subject to national, state, and local criminal background checks as administered through an accredited processor. The fees for local, state and national background checks are the responsibility of the applicant. Documentation of clearance of applicable criminal background checks shall be provided to the environmental services division and renewed every two years for all mobile food unit personnel vending frozen or refrigerated confections. Based on the results of the background check into the applicant's criminal history, the permitting authority will determine the applicant's eligibility. However, in no case will a permit be issued to a person who is a sex offender.
 - (1) Mobile food unit operators and food handlers shall wear a photo ID badge visible to patrons indicating their name and the date their background clearance was issued.
 - (2) Mobile food units shall prominently display their New Braunfels' mobile food unit permit number on the outside of vehicle that is visible and legible to patrons standing five feet from the vehicle.

(Code 1961, § 15-2; Ord. No. 2016-47, § 1, 8-23-16)

Sec. 90-3. - Noises, amplifiers, use of streets restricted.

In addition to the general provisions set forth in this chapter, peddlers, solicitors, mobile food units, or advertising or magazine vendors shall be subject to the following special provisions:

- (1) *Loud noises and amplifying devices.*
 - a. No peddler, solicitor, advertising or magazine vendors, nor any person in his behalf, shall shout, make any outcry, blow a horn, ring a bell, or use any sound device, including any loudspeaking radio or sound amplifying system, upon any of the streets, alleys, parks, or other places of the city or upon any private premises in the city where sound of sufficient volume is so emitted or produced there from as to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.
 - b. Mobile food units (MFU) are prohibited from utilizing loud noises and amplifying devices as described in this section except they are allowed to use amplified music in compliance with the limitations specified in chapter 82, Offenses and miscellaneous provisions, section 82-10.
 - c. MFUs must turn off all music when stationary except when stopped at controlled intersections.
- (2) *Use of public streets.* No peddler, solicitor, mobile food unit or advertising or magazine vendor shall:
 - a. Have exclusive right to any location in the public streets.
 - b. Be permitted a stationary location.
 - c. Be permitted to operate in a congested area where his operations might impede or inconvenience the public.
 - d. Be permitted to demonstrate, sell or offer for sale any goods, wares or merchandise from any vehicle upon any street or highway within the city limits. Mobile food units are permitted to serve and sell from public streets in compliance with the regulations within this chapter.

- e. Be permitted to solicit funds, demonstrate, sell or offer to sell any frozen or refrigerated confections, goods, wares, merchandise, magazines or other items during the hours of darkness within the city limits.
- f. Peddlers, solicitors, mobile food units, or advertising or magazine vendors shall limit their hours to true daylight, which is defined as 30 minutes before sunrise to 30 minutes after sunset.
- g. Mobile food units shall be prohibited from stopping on any street in the state highway system, regardless of the speed limit, including Farm-to-Market Roads located within the corporate boundaries of the city. A state highway system includes, but is not limited to, Interstate Highway 35, Loop 337, FM 725, Business 35, FM 1044, FM 758, FM 1101, FM 306, FM 1102, FM 482, FM 2722, SH 46 and Business 46 (excluding Business 46 located between Coll Street and Walnut Avenue).
- h. Mobile food units are hereby authorized to sell or dispense frozen or refrigerated confections on authorized public streets in compliance with the following:
 - 1. On streets where the posted speed limit is 35 miles per hour or less, with the exception of the following:
 - A. Common Street;
 - B. County Line Road;
 - C. Landa Street;
 - D. McQueeney Road;
 - E. Walnut Avenue;
 - F. San Antonio Street;
 - G. Seguin Avenue;
 - H. Within the boundaries of the New Braunfels' Main Street District; and
 - I. Gruene Road and Hunter Road within the boundaries of the Gruene National Historic District.
 - 2. Mobile food units shall be limited to three trips down a street within one 24-hour period. Trips up and down a cul-de-sac will be counted as one trip.
 - 3. Prior to making a sale or dispensing such frozen or refrigerated confection the driver of such vehicle shall drive to the side of the street, as close as practical to the curb, and if there is no curb, then as close as practical to the edge of the paved portion or the edge of the portion used for vehicular traffic of said road.
 - 4. The driver shall stop, stand or park such vehicle in full compliance with all applicable ordinances of the city and statutes of the state, and particularly ordinances governing the stopping, standing, or parking of vehicles, and such vehicle shall remain so stopped, standing or parked for no longer than is necessary to make the immediate sale or to dispense such frozen or refrigerated confections.
 - 5. Mobile food units shall be equipped with a sign clearly visible from both the front and rear, mounted on the top of the truck and bearing the warning "CAUTION—CHILDREN." The lettering for such sign shall be block style letters not less than six inches high and one-half inch wide, and such letters shall be black against a yellow background. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale or dispensing frozen desserts shall be installed at each end of the sign.
 - 6. Mobile food units shall not stop within 20 feet of an intersection or double park when attempting a sale or when making a sale.

7. All mobile food units when stopped on city streets must vend from the curbside of the vehicle. No vending from the driver's side will be allowed when stopped on city streets.

For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(Code 1961, § 15-3; Ord. No. 2016-47, § 1, 8-23-16)

Cross reference— Placing of goods, containers or other obstructions in right-of-way, § 114-4.

Sec. 90-4. - Penalty for violation of chapter.

Any person or agent thereof who shall violate a provision of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction, shall be punished by a fine of not more than \$500.00.

(Code 1961, § 15-4; Ord. No. 2016-47, § 1, 8-23-16)